

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

JUSTIN GUY, individually and on behalf  
of those similarly situated,

Plaintiff,

Case No. 20-12734

v.

HON. MARK A. GOLDSMITH

ABSOPURE WATER COMPANY, LLC

Defendant.

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**ORDER FOLLOWING DECEMBER 4, 2023 HEARING**

The Court conducted a hearing on December 4, 2023 regarding a number of pretrial matters. As set forth on the record at the hearing:

- Defendant Absopure Water Company, LLC's Motion for Reconsideration of Order Denying Admission of Absopure's Proposed Trial Exhibits (Dkt. 198): The Court denies this motion for the reasons stated on the record. In addition, as explained during the hearing, the Court further orders that Absopure's proposed trial exhibit No. 185 is excluded from evidence because it does not meet the requirements for summary exhibits under Federal Rule of Evidence 1006. To the extent Absopure attempts to utilize any of the excluded summary exhibits as pedagogic devices, it may seek permission from the Court to do so provided that Absopure has introduced substantiating evidence or testimony. As the Court previously explained during the November 13, 2023 joint final pretrial conference, the Court will not permit the parties to utilize demonstrative exhibits or devices during opening statements.

- Plaintiffs' Emergency Motion for Reconsideration of Order on Motion for Summary Judgment (Dkt. 214): The Court reserves its ruling on this motion pending Absopure's presentation of evidence and argument at trial.
- Factual Issues Related to Safety: Per their stipulation, the parties will not be presenting evidence or argument regarding the factual issues related to driver safety or Absopure's status as an entity regulated by the Department of Transportation. See Joint Final Pretrial Order at 16–19.
- Absopure's Proposed Reliance on the Retail or Service Establishment Exemption: Absopure has until December 5, 2023 at 8:00 a.m. to file a memorandum providing support for its position that Absopure may (i) rely on the retail or service establishment exemption to the FLSA as a defense to Plaintiffs' assertion that Absopure willfully violated the FLSA or (ii) argue that the commissions paid demonstrate no willful violation.
- Application of Small Vehicle Exception to MCA Exemption: By 5:00 p.m. on December 5, 2023, the parties must submit memorandums providing authority for their respective positions as to whether the Small Vehicle Exception applies to (i) only those workweeks in which Plaintiffs worked more than 40 hours and drove vehicles weighing 10,000 pounds or less (a "week-by-week" approach), or (b) that some other standard should be applied.
- Number of Jurors: The parties agree that six of eight jurors are needed to render a verdict.

SO ORDERED.

Dated: December 5, 2023  
Detroit, Michigan

s/Mark A. Goldsmith  
MARK A. GOLDSMITH  
United States District Judge